

**REPORT TO:** Executive Board

**DATE:** 18 July 2019

**REPORTING OFFICER:** Strategic Director – Enterprise, Community and Resources

**PORTFOLIO:** Physical Environment

**SUBJECT:** Fixed Penalty Notices

**WARD(S):** Borough-wide

## **1. PURPOSE OF REPORT**

- 1.1 To provide Members with details of new Regulations relating to Fixed Penalty Notice provisions and to make recommendations in respect of the Fixed Penalty Notice amounts to be set for a range of waste related offences.

## **2. RECOMMENDED: That Executive Board**

- 1) Note the following Fixed Penalty Notice amounts that are set by statute:

- (a) Abandoning a Vehicle - £200;
- (b) Failure to Produce Authority (Waste Transfer Notes) - £300;
- (c) Failure to Furnish Documentation (Waste Carrier's Licence) - £300;

- 2) Approve the following Fixed Penalty Notice amounts that may be set by the Local Authority:

- (a) Littering - £100;
- (b) Littering from a Vehicle - £100
- (c) Fly-tipping - £400
- (d) Graffiti and Fly-Posting - £100;
- (e) Offences in Relation to Waste Receptacles - £100;
- (f) Householder breach of 'Duty of Care' Obligations - £200;
- (g) Contravention of a Public Spaces Protection Order - £100;
- (h) Failure to comply with a Community Protection Notice - £100;

- 3) Approve the following Fixed Penalty Notice amounts discounted for early payment:

- (a) Litter - £75;
- (b) Littering from a Vehicle - £75
- (c) Fly-tipping - £300
- (d) Graffiti and Fly-Posting - £75;

- (e) Abandoning Vehicles - £120
  - (f) Offences in Relation to Waste Receptacles - £75;
  - (g) Failure to Produce Authority (Waste Transfer Notes) - £250;
  - (h) Failure to Furnish Documentation (Waste Carrier's Licence) - £250;
  - (i) Contravention of a Public Spaces Protection Order - £75;
  - (j) Householder breach of 'Duty of Care' Obligations - £150;
  - (k) Failure to comply with a Community Protection Notice - £75;
- 4) Approve that, where Legislation provides discretion for the Council to set the time period for early payment discount of Fixed Penalty Notices, such time period shall be set as being within ten days.
- 5) Delegate authority to the Strategic Director – Enterprise, Community and Resources, in consultation with the relevant Portfolio Holder (as determined by the nature of the offence for which a Penalty Notice relates) to make any future changes to Fixed Penalty Notice amounts and early payment discounts as may be considered appropriate.

### **3. SUPPORTING INFORMATION**

- 3.1 This report provides Members with details of new three new Regulations that have been introduced which make changes to Fixed Penalty Notice (FPN) provisions. In summary, the new Regulations have extended the range of offences for which FPNs can be issued and increased the amounts that local authorities can set FPNs at. Reports on the new Regulations and revised FPN provisions have been considered by the Environment and Urban Renewal Policy and Performance Board and the recommended FPN amounts set out within this report have been endorsed by Members of that Board.

#### The Environmental Offences (Fixed Penalties) (England) Regulations 2017

- 3.2 The Environmental Offences (Fixed Penalties) (England) Regulations 2017 increase amounts payable for FPNs in respect of certain offences relating to the environment. They replace a number of regulations contained within the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007. These Regulations provide local authorities with the ability to increase the Fixed Penalty Notice (FPN) amounts for some environmental offences to a maximum of £150 and also give local authorities increased powers to tackle littering from a vehicle.
- 3.3 Members are advised that the new legislation sets a default level of £100 for offences relating to littering, graffiti, fly-posting and the distribution of printed matter. This means that should the Council not specify its FPN levels for these offences, the default penalty of £100 is automatically applied.

### The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018

- 3.4 These Regulations enable Councils (outside of London) to issue a 'civil penalty notice' to a person who is the keeper of a vehicle from which litter is thrown. This removes the need to identify precisely who threw the litter before you can take enforcement action however, in the first instance, Officers will always look to exhaust all lines of enquiry to positively identify the actual person responsible. Having the ability to issue a civil penalty to the keeper of a vehicle provides a new tool for the Council to use to encourage the keeper of a vehicle to provide details of the individual responsible for littering if it was not them. A civil penalty is a civil fine which, unlike a Fixed Penalty Notice, does not carry the risk of a criminal prosecution.
- 3.5 Before the Council can use these new powers it needs to set the civil penalty level. The amount of a penalty for littering from a vehicle will be the same as the amount specified by the authority for Fixed Penalty Notices for littering and this is covered in section 4 of the report.

### Waste (Household Waste) Duty of Care (England and Wales) Regulations 2005

- 3.6 Under the Waste (Household Waste) Duty of Care (England and Wales) Regulations 2005, householders are required to take reasonable measures to ensure that household waste produced on their property is passed onto an 'authorised person'. An authorised person is defined in legislation but is normally a local authority or a registered waste carrier.
- 3.7 A householder's legal duty is set out in the 'Waste Duty of Care Code of Practice' issued by DEFRA. Failure to comply with the legal obligations is a criminal offence and the primary circumstances where a householder would be deemed to have done so are;
- Where an individual passes waste to an unauthorised waste carrier, and;
  - Where fly-tipped waste is traced back to an individual who is found to have failed to take reasonable steps to ensure that they transferred the waste to an authorised waste carrier.
- 3.8 Those found breaching their 'duty of care' obligations face prosecution and a fine of up to £5,000. Until the new Regulations were introduced in November 2018, the only option for local authorities to address 'duty of care' breaches was to take the offender to court.
- 3.9 The new Regulations however allow FPNs to be issued as an alternative to prosecution. This provides a more proportionate approach to deal with householders who breach their 'duty of care' obligations and provide an opportunity for an individual to discharge all liability for the 'duty of care' offence by payment of a financial penalty.

3.10 Local authorities can set their FPN amounts for offences relating to breaches of 'duty of care' obligations within the limits set by legislation; these being a minimum of £150 and a maximum of £400. Members are advised that legislation also sets a default penalty level of £200. This means that should a local authority not specify its FPN levels for 'duty of care' offences, the default penalty of £200 is automatically applied.

#### 4. RECOMMENDATIONS

4.1 The table below sets out the FPN amounts specified under legislation for a range of waste related offences and the recommended amounts to be set where the Council has discretion to set such amounts locally. The table reflects the revisions to FPN provisions following the introduction of the new Regulations stated in this report, as well as details of FPN amounts that have been subject to previous approval.

Offence	Statutory FPN Amount Limits Min - Max	Statutory Minimum FPN Amount for Early Payment	Recommended HBC FPN Amount	Recommended HBC FPN Amount for Early Payment
Litter	£65 - £150	£50	£100	£75
Litter from Vehicles	£65 - £150	£50	£100	£75
Fly-tipping	£150 - £400	£120	£400	£300
Graffiti and Fly-Posting	£65 - £150	£50	£100	£75
Abandoning Vehicles	£200	£180	£200	£150
Offences in Relation to Waste Receptacles	£75 - £110	£60	£100	£75
Contravention of a Public Spaces Protection Order	£100	N/A	£100	£75
Failure to comply with a Community Protection Notice	£100	N/A	£100	£75
Breach of 'Duty of Care' obligations (Waste Carriers)	£300	£180	£300	£250
Breach of 'Duty of Care' obligations (Householders)	£150 - £400	£120	£200	£150

4.2 Members are asked to consider and approve the recommended FPN and early payment amounts set out in the table in paragraph 4.1. Whilst a number of the FPN amounts set out in the table have been the subject of previous approval, asking Members to approve them will serve to reaffirm the Council's position on such amounts.

4.3 For most waste related offences, legislation sets a standard FPN payment period of fourteen days. The Council has the discretion to

offer a discount for early payment of an FPN. Where the Council has the discretion to vary such payment period, Members have previously approved the time period for early payment discount as being within ten days and Members are being asked to approve that this time period be retained.

## **5.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 5.1 Increasing FPN amounts could increase payment rates by creating a larger differential incentive for early payment. This could help avoid the considerable resource implications and costs involved in prosecuting individuals who fail to pay FPNs issued for waste related offences.

## **6.0 POLICY IMPLICATIONS**

- 6.1 Adopting the new provisions can be accommodated within existing Policy.

## **7.0 IMPLICATIONS FOR THE COUNCIL'S PRIORITIES**

### **7.1 Children and Young People in Halton**

No direct impact.

### **7.2 Employment, Learning and Skills in Halton**

No direct impact.

### **7.3 A Healthy Halton**

By enhancing its ability to deter waste related offences through increased FPN amounts, and by making use of new FPN provisions, the Council will be making a positive contribution towards improving the local environment and the appearance of the borough; which shall in turn have an overall beneficial effect on health and wellbeing.

### **7.4 A Safer Halton**

Effective use of its regulatory powers will demonstrate that the Council is committed to dealing with waste related offences. The Council's efforts to improve environmental standards and reduce waste related offences will have a positive impact upon the Safer Halton Priority.

### **7.5 Halton's Urban Renewal**

No direct impact, but overall environmental benefits should make the Borough a more attractive location for investment.

## **8.0 RISK ANALYSIS**

- 8.1 Failure to make full use of legislative powers available to deal with waste related offences to help improve the local environment may lead to criticism of the Council, thereby damaging its reputation

## **9.0 EQUALITY AND DIVERSITY ISSUES**

- 9.1 The Council aims to be consistent and even-handed in all regards. Taking enforcement action to deal with waste related offences is not intended to have either a positive or negative impact upon equality and diversity or apply differently to any particular group.

## **10.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

<b>Document</b>	<b>Place of Inspection</b>	<b>Contact Officer</b>
Environment & Urban Renewal Policy & Performance Board Report 27 <sup>th</sup> June 2018: Fixed Penalty Notices	Municipal Building Kingsway Widnes	Angela Scott
Environment & Urban Renewal Policy & Performance Board Report 27 <sup>th</sup> February 2019: Household Waste Duty of Care	Municipal Building Kingsway Widnes	Angela Scott